

PATRIC A. LESTER (SBN 220092)
pl@lesterlaw.com
Lester & Associates
5694 Mission Center Rd., #358
San Diego, CA 92108
Tel: 619.665.3888
Fax: 314.241.5777

Attorneys for Plaintiff Ronald and Jacqueline Winch

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Ronald and Jacqueline Winch,

Plaintiff,

v.

Credence Resource Management, LLC,

Defendant.

Case No. 5:15-cv-02518

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

INTRODUCTION

1. Ronald and Jacqueline Winch (“Plaintiffs” and/or “Ronald” or “Jacqueline” when referring to the particular individual only) seek redress in this action for Credence Resource Management, LLC’s (“Defendant”) practice of making unauthorized phone calls to cellular telephones under the Telephone Consumer Protection Act, 47 U.S.C. §227, *et seq.* (“TCPA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §1331 and 47 U.S.C. §227. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391 for the following reasons: Plaintiffs reside in the City of Palm Springs, County of Riverside, State of California which is within this judicial district; the conduct complained of herein occurred within this judicial district; and many of the acts and transactions giving rise to this action occurred in this district.

PARTIES

3. At all times relevant, Plaintiffs were individuals residing in Palm Springs, California and each was a “person” as defined by 47 U.S.C. §153(39).

4. Defendant is, and at all times mentioned herein was, a Nevada limited liability company, with its principal place of business located at 6045 Atlantic Boulevard, Suite 210, Norcross, Georgia 30071, and is registered to do business in the state of California, and is a “person”, as defined by 47 U.S.C. §153(39).

5. Plaintiffs make the following allegations on information and belief, with the exception of those allegations that pertain to Plaintiffs, or to plaintiffs’ counsel, which Plaintiffs allege on personal knowledge.

6. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

7. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. §227 (TCPA), in response to a growing number of consumer complaints regarding certain telemarketing practices.

8. The TCPA regulates, among other things, the use of automated telephone equipment, or “auto-dialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

9. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.

10. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the

1 “prior express consent” of the called party. The FCC “emphasize[d] that prior express
2 consent is deemed to be granted only if the wireless number was provided by the
3 consumer to the creditor, and that such number was provided during the transaction that
4 resulted in the debt owed.”

5 **FACTS**

6 11. On or about December 17, 2014, Plaintiff Ronald received a collection call
7 from Defendant on his cellular telephone number ending in “5308”. Without conceding
8 that he ever gave express consent, at some point during the series of calls to him from
9 defendant, he verbally revoked any consent he may have given to receive any telephone
10 calls from Defendant.

11 12. On or about February 18, 2015, Plaintiff Jacqueline received a collection call
12 from Defendant on her cellular telephone number ending in “3095”. Without conceding
13 that she ever gave express consent, at some point during the series of calls to her from
14 defendant she verbally revoked any consent she may have given to receive any telephone
15 calls from Defendant.

16 13. The FCC in its 2015 Order makes clear that consumers may revoke consent
17 through any reasonable means, either orally or in writing. *See* 2015 FCC Order, ¶¶ 55, 64
18 cited in *Reardon v. Uber Technologies, Inc.*, No. 14-CV-05678-JST, 2015 WL 4451209,
19 at *10 (N.D. Cal. July 19, 2015)

20 14. Defendant repeatedly contacted Plaintiffs on Plaintiffs’ cellular telephones.
21 Plaintiffs received numerous calls on their cellular phones from Defendant.

22 15. The calls to Plaintiff Ronald ’s cellular telephone ending in “5308” from
23 Defendant occurred on, but not limited to, the following dates during 2014, December 17
24 (twice) and 18, and in 2015, June 18, and August 22.

25 16. The calls to Plaintiff Jacqueline ’s cellular telephone ending in “3095” from
26 Defendant occurred on, but not limited to, the following dates during 2015, April 8, 10,
27 11, 13, 17, 21-23, May 15, 27, 28, June 25, 28, July 3, 7, 8.
28

26. As a result of Defendant's illegal conduct, Plaintiffs suffered actual damages and, under section 227(b) (3) (B), are entitled to, jointly, inter *alia*, a minimum of \$500.00 in damages for each such call, in violation of the TCPA.

(Knowing and/or Willful Violations of the TCPA)

28. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

PRAAYER FOR RELIEF

1. As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs seeks \$500.00 in statutory damages for each and every call that violated the TCPA;

1 3. Injunctive relief prohibiting such violations of the TCPA by
2 Defendant in the future;

3 4. Such other relief as the Court deems just and proper.

4 **TRIAL BY JURY**

5 Pursuant to the seventh amendment to the Constitution of the United States of
6 America, Plaintiffs are entitled to, and demand, a trial by Jury.

7
8 DATED: December 10, 2015

LESTER & ASSOCIATES

9 By: /s/ Patric A. Lester

10 Patric Lester

11 Attorney for Plaintiffs

12 Ronald and Jacqueline Winch
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28